IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

:: O R D E R ::

Smt. Sushila Nagar
Vs.
The High Court of Judicature for Rajasthan & Ors.

D.B. CIVIL WRIT PETITION NO.959/2004

Date of Order :: 17th August 2006

P R E S E N T

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE SHRI JUSTICE AJAY RASTOGI
::

Ms. Indira Jaisingh with
Shri A.K. Jain, for the petitioner.
Shri A.K. Sharma }
Shri Kamlakar Sharma }
Shri Abhay Bhandari }, for the respondents.
Shri Ashok Gaur }

*****

BY THE COURT (PER HON'BLE THE CHIEF JUSTICE)

This is an unusual writ petition by a Judicial Officer and member of the Rajasthan Judicial Service who filed complaint alleging sexual harassment at the hands of fellow judicial officers. Not

satisfied with the result of the enquiry she has now approached this Court on judicial side seeking directions as under :

(1) by an appropriate writ, order or directions quash and set aside the order dated 18.10.2003 rejecting the application for amending the charge. It should be directed that the charge against the respondentNo.2 may be reframed as prayed for in the application dated 6.9.2003 (Annexure-20).

(2) by an appropriate writ, order or directions this Hon'ble Court may further be pleased to direct the respondent No.1 proceed against the four remaining officers named in the complaint of the petitioner (Annexure-1) who have been exonerated in the preliminary enquiry.

(3) by an appropriate writ, order or direction that the respondent No.3 the State Government may be directed to take statutory steps to enforce the norms and guidelines prescribed by the Hon'ble Supreme Court in Vishakha's case and create adequate infrastructure for the same.

(4) That the respondent No.1 may be directed to take all proper steps to enforce the norms and guidelines prescribed with Hon'ble Supreme Court with regard to gender discrimination and sexual harassment.

The case of the petitioner briefly stated is that on her appointment to the Rajasthan Judicial Service she was posted as Additional Munsif and Judicial Magistrate at Ajmer in March, 1992. Shri Uma

Shanker Vyas, a batch senior to her, was also posted there. In the beginning he tried to be intimate with her and later tried to make advances. He then spread rumours about her character. Once he was admonished by the then District Judge, Ajmer Shri D.C. Dalela. On intervention of other judicial officers, however, he submitted a written apology on 22.8.1992 and the petitioner did not pursue the matter.

The petitioner has then referred to the conduct of Shri Magha Ram Choudhary posted as Additional Chief Judicial Magistrate No.1, Ajmer from 1992-94. According to the petitioner he was an elderly person and she gave him due respect. But, strangely, she started receiving anonymous letter which she finally found had been written by him. Letters contained “adolescent expressions tending to be some time romantic”.

In July, 1997 the petitioner was again posted at Ajmer as Civil Judge (Junior Division) South when Shri K.L. Vyas was the District Judge. He happened to be uncle of Uma Shanker Vyas. Shri Narendra Kumar

Purohit, Shri Rakesh Kumar Mathur and Shri Vinay Kumar Goswami were also posted there as Additional District Judges and Additional Chief Judicial Magistrate respectively. They took the petitioner for ride in their car on the pretext of searching a venue for Lok Adalat. The petitioner later came to know that the venue was already fixed and their object simply was “to have her company for entertainment”. There were other lady judicial officers posted at Ajmer but they were not asked to accompany them. The petitioner alleged that this was so because she belonged to Scheduled Caste community and therefore “considered to be an available commodity”.

Shri K.L. Vyas called her to Dak Bungalow at Beawar after office hours which she refused. He put pressure on the Beawar Bar to make complaint against her character. In order to victimize her, she was assigned duty during Diwali holidays even though male officers were available. A judicial staff of Court of Additional District Judge, Beawar who had been accused of teasing girls was posted in her Court.

Shri K.C. Singhal, Additional District Judge posted at Beawar during 1997-99 asked her to bring a packet from Jaipur where she had gone to see her parents. After the packet was handed over to Shri Singhal at Beawar, she came to know that it contained liquor bottles. She complained to Shri Singhal but, it seemed, he did not take it easy because she started receiving strange phone calls and she got the telephone disconnected. After Shri Singhal was posted at Chittorgarh in February 1999, she got a new telephone connection. She again started receiving blank calls which were traced to the residence of Shri Singhal.

On 26.5.2001 the petitioner made a complaint, alongwith supporting documents, to the Registrar General of the High Court in respect of the above-mentioned incidents. On 10.6.2001 she sent some more documents. When no action was taken on the complaint the petitioner approached the National Women Commission and the Supreme Court of India. On receipt of the letter from the Registrar General, Supreme Court of India, dated 9.7.2001, the matter was placed

before the Chief Justice and an enquiry was made. The enquiry was held by the Registrar General (Vigilance) who submitted report on 9.11.2001 recommending disciplinary action against Shri Magha Ram Choudhary and Shri K.C. Singhal. Shri Uma Shanker Vyas, Shri Narendra Kumar Purohit, Shri Rakesh Kumar Mathur and Shri Vinay Kumar Goswami were let off. The petitioner submitted a number of applications to supply her copy of the enquiry report and other related documents but it was only in September, 2003 that copy of the report was supplied. She submitted representation against the enquiry report immediately on 23.9.2003. She also submitted application to prosecute the concerned officers under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

It may be stated here that the conduct of Shri K.L. Vyas does not appear to have been examined because he had superannuated from service and died soon after. Shri K.C. Singhal was compulsorily retired and in the circumstances the departmental proceeding commenced against Shri Magha Ram Choudhary alone. The charge-sheet served on him referred to the period

10.6.1992 to 25.5.1993 even though, according to the petitioner, the enquiry report adverted to allegations for the subsequent period too. Her case is that she pointed out the mistake to the Registrar (Vigilance) who was acting as the Presenting Officer in the departmental enquiry. He moved application for amendment of the charge on 6.9.2003. The Enquiry Judge (a sitting Judge of the High Court) however, by order dated 18.10.2003 rejected the application.

The petitioner also made allegation against previous Enquiry Judge and, it is said, on her complaint on 30.9.2002 the Enquiry Judge was changed. The petitioner has referred to at length guidelines laid down by the Supreme Court in Vishakha Vs. State of Rajasthan, AIR 1997 SC 3011=(1997) 6 SCC 241, and alleged that the guidelines were not followed in dealing with her complaint. The petitioner in the circumstances filed the writ petition – in her own words – “being aggrieved by the exoneration of the four judicial officers complaint against, rejection of charge amendment application and non-compliance of the guidelines laid down by the Hon’ble Supreme Court as

well as non-enforcement of prevention of atrocities on SC/ST against the accused officers" – seeking reliefs noticed at the outset.

At this stage it may be mentioned that the petitioner had initially impleaded, besides the High Court and the State of Rajasthan as respondent nos.1 and 3 respectively, Shri Magha Ram Choudhary as respondent no.2. Later, on her application, Shri Narendra Kumar Purohit, Shri Rakesh Kumar Mathur, Shri Vinay Kumar Goswami and Shri Uma Shanker Vyas were added as respondent nos.4 to 7 and notice was issued to them.

The High Court has filed reply and additional affidavit. Respondent nos.4 to 6 have filed a common reply while respondent No.7 has filed a separate reply. The petitioner has filed rejoinder to the said replies and an additional affidavit.

In its reply, the High Court stated that the complaint filed by the petitioner on 26.5.2001, received in the office on 1.6.2001, was placed before

the Administrative Judge on 3.7.2001. The Administrative Judge opined that no specific misconduct had been alleged against any particular officer, allegations were about things alleged to have taken place on 7-8 years ago and therefore no action was possible. However, later on receipt of copy of the same complaint from the Registrar General of the Supreme Court, the Chief Justice ordered preliminary enquiry. The enquiry revealed prima facie case of misconduct against officers, namely Shri Magha Ram Choudhary, and Shri K.C. Singhal; no case was found against the remaining four officers. The report was approved by the Chief Justice on 9.11.2001 and regular departmental enquiry was ordered against Shri Magha Ram Choudhary and Shri K.C. Singhal. The petitioner made representation on 7.1.2002 for reconsideration. After considering the report and the entire record on 14.2.2002 the Administrative Judge found that no case was made out for reconsideration and the representation dated 7.1.2002 was rejected. The petitioner made yet another representation on 23.9.2003 seeking reconsideration which was rejected by the then Administrative Judge on 3.8.2004.

As regards the reliefs sought by the petitioner it has been stated in the reply that the matter essentially relates to proceeding in a departmental enquiry between the delinquent and the Department (High Court) and the complainant has no locus standi to seek direction for conducting enquiry in a particular manner, that too during pendency of the departmental enquiry. The petitioner has set the ball in motion and it is for the disciplinary authority to decide whether any misconduct is made out or not. The application for amendment of the charge was filed by the Presenting Officer and the acceptances or rejection thereof could be challenged by either the delinquent or the Presenting Officer, as the case may be. The complainant/petitioner can not make grievance particularly when she had not moved any kind of application for amendment of the charge. The subject matter of preliminary enquiry was the period from 10.6.1992 to 25.3.1993 when the complainant and the delinquent (Shri Magha Ram Choudhary) were posted at Ajmer. Rejection of the application for amendment of the charge thus provided no cause of action to the

petitioner to challenge the order.

It has further been stated in the reply that the petitioner was placed under suspension on 20.4.2001 in view of disciplinary proceedings – three under Rule 16 and two under Rule 17 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 - pending against her. On 27.4.2001 she made representation alleging victimization and injustice and sent copies thereof to the Hon'ble Judges of the High Court. In her representation she complained of being forced to resign. Reports of her resignation appeared in local newspapers. The matter was also raised in the Rajasthan Legislative Assembly on 1.5.2001 which too was reported in the local newspaper. The matter was placed before the Full Court on 24.5.2001 under Agenda No.XIII as under :

> "Matter regarding propriety and veracity of allegations raised in the Rajasthan State Assembly at the behest of Smt. Sushila Nagar, RJS and further to consider the propriety of sending the representation to the Hon'ble Judges of this Court regarding circumstances she was being forced to submit her resignation"
>
> The Full Court resolved as under :-

> “Having considered the matter and after due deliberation it is RESOLVED that a show cause notice by the Full Court be issued to Smt. Sushila Nagar as to why action should not be taken against her with regard to the propriety of sending the representation to the Hon’ble Judge of this Court regarding the circumstances she was being forced to submit her resignation.”

It has also been stated in the reply that pursuant to the directions of the Supreme Court in Vishakha Vs. State of Rajasthan (supra), a Complaints Committee comprising of Hon’ble Mrs. Justice Gyan Sudha Misra and Hon’ble Mr. Justice Ashok Parihar has been constituted to look into the cases of sexual harassment of the female employees working in the office of the Rajasthan High Court.

Respondent nos.4 to 6 in their reply have challenged the locus standi of the petitioner to file the writ petition. It has been stated that the preliminary enquiry did not reveal any case against them and in proceeding under Article 226 of the Constitution of India, the High Court cannot go into findings of fact recorded in the preliminary enquiry as it is not open to the High Court to reappraise the evidence. On facts it has been stated that the

complaint was made on 26.5.2001 after four years of the alleged incident. In the representation made to the Registrar General on 27.4.2001 there was no whisper of allegation against these respondents. She got the issue raised in the Rajasthan Legislative Assembly on 1.5.2001 without levelling any allegation against the respondents. In her interview to the media also there was no mention of these respondents. In the complaint to the Rajasthan State Human Rights Commission on 16.5.2001 too nothing was said against the respondents. On 22.5.2001 she gave interview to the correspondent of the Hindustan Times but again did not utter a single word against these respondents. On 24.5.2001, the Full Court resolved to issue show cause notice to the petitioner. Only then, on 26.5.2001, for the first time, allegations were made against these respondents because they happened to be posted in the Registry of the Jaipur Bench of the High Court at that time. The respondents have asserted that the allegations against them are false and frivolous, and an after thought, designed to make out defence in the departmental enquiries against her. The respondents have referred to the factual background which is not

necessary to notice for disposal of this writ petition.

In his reply, respondent No.7 has stated that the enquiry officer found no prima facie material to warrant departmental enquiry against him. Neither the finding of the enquiry officer nor the order (of the Chief Justice) closing the enquiry against the respondent has been challenged by the petitioner. Without challenging the finding and order of the High Court on administrative side, relief no.2 seeking direction to proceed against the remaining officers cannot be granted. The respondent has challenged the maintainability of the writ petition on the ground of delay and laches. Whereas the preliminary report was submitted in November 2001, the petition was filed after three years. The respondent submits that remedy of writ petition is extra-ordinary and equitable in nature and relief cannot be granted to a person if he comes with unclean hands and much after the cause of action had accrued. Respondent no.7 has also averred that the writ petition is an abuse of the process of law, an effort to undermine and malign the judiciary.

He has dealt with at length the allegations made against him. These statements are in the nature of defence which is not necessary to notice for disposal of this writ petition.

In the rejoinder to the reply of the High Court, the petitioner has stated that the preliminary enquiry was not held according to law and it was an eyewash. No opportunity of cross-examination was given to prove her case. The complaint filed by the petitioner was not dealt with as per the directions of the Supreme Court in Vishakha's case. The petitioner has tried to find fault with the preliminary enquiry report asserting that no reasonable person could reject the allegations in view of the materials which had been placed on record. She has denied that the orders passed by the High Court on administrative side were communicated to her, it was only through newspapers that she came to know about them.

Ms. Indira Jaisingh appearing for the petitioner submitted that the enquiry was not held as per the guidelines in Vishakha case, and the stand in

para 14 of the reply of the High Court that the incident having taken place prior to the judgment in Vishakha case, the procedure indicated therein will not apply, is not correct. According to the counsel, the guidelines laid down by the Supreme Court are applicable in all cases of sexual harassment at workplaces and in the circumstances a fresh enquiry must be held by a Committee headed by a woman Judge in which besides other woman members, representatives of a Non- Government Organization (NGO) should be associated.

Counsel submitted that no disciplinary action was proposed against Shri Uma Shanker Vyas in view of apology tendered by him which is not sufficient reason for not holding departmental enquiry. As regards others, counsel submitted, sufficient materials had been placed before the Enquiry Officer i.e. the Registrar General (Vigilance) and conclusion to the contrary reached by him was not correct. Counsel submitted that instead of initiating disciplinary action against them, as many as 10 charge-sheets were served on the petitioner for filing complaint against

the concerned officers.

On behalf of the High Court, it was submitted that the petitioner filed complaint only after the Full court issued show cause notice on 24.5.2001 for committing acts of impropriety. The complaint related to incidents which had allegedly happened years ago. In any view, the matter was got enquired into, but the enquiry revealed prima facie case against only Shri Magha Ram Choudhary and Shri K.C. Singhal, and not against the rest. The correctness of findings which was approved by the Chief Justice cannot be gone into in a proceeding under Article 226 of the Constitution. Judicial review, according to the counsel, is permissible only in cases of illegality, procedural irregularity, irrationality and proportionality. So far as the complainant is concerned, he/she can only assist the Enquiry Authority. The question of delinquency or misconduct is basically between the delinquent and the employer and the complainant cannot pursue the matter beyond a certain point.

On behalf of the respondent-officers it was

submitted that the writ petition is not maintainable as the cause of action is said to be rejection of the application for amendment of charge, but if the Presenting Officer was not aggrieved by the order, the petitioner has no locus standi to challenge the same. Not only the complaint was filed after years of the alleged incident, the writ petition was also filed after three years of the preliminary enquiry. Counsel appearing for the officers reiterated the stand of the High Court that the reliefs sought by the petitioner are beyond the scope of judicial review as the Court cannot sit in appeal over the findings in the preliminary enquiry and re-appraise the evidence and reach a different conclusion.

On pleadings of the parties and the submissions made, two questions broadly arise for consideration – first, whether the enquiry was not held in accordance with law and whether there has been violation of the guidelines laid down in Vishakha case; and second, whether the complainant can seek amendment of the charge and/or challenge the findings of the enquiry officer in the preliminary enquiry and,

further, seek direction to initiate departmental enquiry against the persons accused of misconduct.

We shall first consider the question as to whether there was violation of the guidelines laid down in Vishakha case and therefore there should be a fresh or further enquiry.

In this connection, before proceeding further, we would like to disapprove the stand of the High Court that the alleged incidents having taken place prior to the judgment in Vishakha case, guidelines would not apply. Such a plea could be accepted if the acts constituting sexual harassment at workplace would not amount to misconduct but for the judgment in Vishakha case. Where the act does not constitute an offence on the date it is committed it cannot be subject matter of prosecution or proceeding, but that principle is applied only in a criminal case. Misconduct is misconduct and irrespective of the date of the offence, enquiry into complaints of sexual harassment after the judgment in Vishakha case will have to be dealt with in accordance with the

guidelines. As a matter of fact, the judgment does not enact any law, it only recognizes the fundamental rights of working women under Articles 14, 15, 19 and 21 of the Constitution of India and fixes guidelines for enforcement of those rights.

Having made these remarks, we may now notice the guidelines. They are ten in number but in the present case we may only notice guidelines 4, 5, 6 and 7 which read as under :-

> 4. *Criminal proceedings :*
>
> Where such conduct amounts to a specific offence under the Indian Penal Code or under ay otherlaw, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.
>
> In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seeks transfer of the perpetrator *or their own transfer.*
>
> 5. *Disciplinary action :*
>
> Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. *Complaint mechanism :*

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time-bound treatment of complaints.

7. Complaints Committee :

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counselor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its members should be women. Further, to prevent possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party,either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government Department concerned of the complaints and action taken by them.

The employers and person-in-charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government Department.

On behalf of the petitioner, much emphasis was laid on guideline 7. The sheet anchor of the argument of Ms. Indira Jaisingh was that enquiry should have been held by the Complaints Committee

constituted in accordance with the guidelines, that is to say, by a Committee headed by woman judge and comprising of women - not less than half – as members. Further, some NGO should have been associated with the enquiry. Preliminary Enquiry, held by the Registrar General (Vigilance) in the instant case, therefore was not in accordance with law.

We have given our anxious consideration to the submissions of the counsel. In our understanding, the Complaints Committee referred to in the Guidelines is intended to be a permanent committee or body in every department which can look into complaints relating to sexual harassment at workplaces as a fact finding body. The enquiry by the Complaints Committee is different from disciplinary enquiry. Where the enquiry by the Complaints Committee reveals facts amounting to any offence under Indian Penal Code or any other law the employer is required to initiate appropriate action in accordance with law, and where the enquiry reveals conduct amounting to misconduct in employment – as defined in the relevant service rules, appropriate disciplinary action is required to be

taken by the employer in accordance with the concerned rules. This is evident from a conjoint reading of the Guidelines. If we read guideline 7 first and then guidelines 4 and 5, the true import of the guideline would become clear. First, the matter should be looked by the Complaints Committee and where facts disclosed in the enquiry by the Committee constitute a criminal offence, criminal proceeding should be initiated and where facts so disclosed constitute misconduct in employment, disciplinary action should be initiated. Ultimately, in case of misconduct, the complaint has to be dealt with in accordance with the relevant rules. This is evident from the words "appropriate disciplinary action should be initiated by the employer in accordance with those rules" in guideline 5.

Adverting to the instant case, admittedly, the preliminary enquiry was held as precursor of regular departmental enquiry. It is almost a practice in this Court to hold a preliminary enquiry before holding departmental enquiries under rules 16 or 17, as the case may be, of the Rajasthan Civil Service

(CCA) Rules. The point for consideration is where preliminary enquiry is held in which statements of witnesses are recorded, documents are received in evidence and thereafter findings are reached about existence of prima facie case necessitating regular enquiry, the enquiry so held can be said to be falling short of the enquiry contemplated in Vishakha case so as to warrant a further enquiry ? As seen above, the objection of enquiry by Complaints Committee is to verify facts, prima facie, to find out as to whether the conduct alleged amounts to 'criminal offence' or 'misconduct', but where an enquiry is held " in accordance with the rules" – to use the phraseology in guideline 5, the direction of the Supreme Court must be deemed to have been substantially complied with.

In R.C. Sood Vs. High Court of Judicature at Rajasthan & Ors., (1998) 5 SCC 493, the Supreme Court had occasion to consider the rules of the High Court of Rajasthan though in a somewhat different background. A preliminary enquiry against R.C. Sood, then posted as Registrar in the High Court, was conducted by Additional Registrar (Vigilance) in

respect of certain complaints and the report of preliminary enquiry was approved by the Chief Justice on 31.1.1994. Later, on 27.10.1994 on the request of a Judge, the then Chief Justice referred the matter to the Full Court. On 30.11.1994 the Full Court constituted a Committee of three Judges for fresh preliminary enquiry, the earlier order of the Chief Justice dated 31.1.1994 approving the report of the Additional Registrar (Vigilance) and closing the file was revoked. A question arose among other things about the competence of the Chief Justice to approve the report of preliminary enquiry. After referring to the relevant rules, viz. rules 14, 15 and 32 of the High Court Rules, 1952, the Supreme Court observed as under :-

> "Every complaint received against a judicial officer is not required to be brought before the Full Court unless and until the question of removal or dismissal of the judicial officer arises. It was competent for the Chief justice especially in view of the provision of sub-rule (2) of Rule 32, while dealing with the complaint received against the petitioner, to decide that no action thereon was called for. No illegality or impropriety was, therefore, committee by the Chief Justice when he decided on 31.1.1994 that the complaint of Vijay Singh did not call for any disciplinary action against the petitioner. It is only if the Chief Justice was of the view that

> disciplinary action may be called for that that by virtue of clauses (e), (f) and (g) the matter would have required to be brought before the Full Court. That apart, the Chief Justice could under clause (l) have brought the complaint to the notice of the Full Court, but he chose not to do so. This was because he was apparently satisfied about the hollowness of the complaint on the basis of the preliminary report of the Additional Registrar (Vigilance) which was received by him."

Though the issue which directly arose for consideration related to power of the Chief Justice vis-à-vis that of the Full Court, the decision makes two points – first, it recognizes and upholds the practice of preliminary enquiries by Registrar in-charge Vigilance on receipt of complaints; and second, it recognizes and upholds the power of the Chief Justice to approve the report of the preliminary enquiry.

In the instant case, on consideration of the report of preliminary enquiry, the Chief Justice passed the following order on 9.11.2001 :-

> "It is concluded that no misconduct or any act which is unbecoming of a Judicial Officer is made out against Shri Uma Shanker Vyas, Shri N.K. Purohit, Shri Vinay Kumar Goswami and Shri Rakesh Kumar Mathur. So no action or Departmental Enquiry is warranted against these officers. Hence action is dropped."

The respondents have taken a specific plea that the said order of the Chief Justice was not challenged by the petitioner and unless the same is challenged and set aside or otherwise modified, no departmental enquiry can be held against the concerned officers.

Before adverting to the question whether and to what extent the complainant can challenge the findings and conclusion of the Enquiry Officer we may conclude the discussion regarding compliance of directions in Vishakha case. We are of the view that having regard to the position of judicial officers under the Constitution of India, any enquiry by outsiders including representatives of a non-government organization would be subversive of the constitutional scheme and therefore there cannot be literal compliance of the guidelines and directions in Vishakha case. Under Article 235 of the Constitution, the control over the subordinate courts vests in the High Court and the High Court can not share this power with any outside agency. In Samsher Singh V. State of Punjab, (1974) 2 SCC 831, enquiry was held by the

Vigilance Department of the State Government on reference by the High Court into allegations of misconduct. The findings of the Vigilance Department ultimately led to termination of services of the appellant. Strongly disapproving the course adopted by the High Court, a Bench of seven Judges of the Supreme Court observed as under :-

> "78. The High Court for reasons which are not stated requested the Government to depute the Director of Vigilance to hold an enquiry. It is indeed strange the High Court which had control over the subordinate judiciary asked the Government to hold an enquiry through the Vigilance Department. The members of the subordinate judiciary are not only under the control of the High Court but are also under the care and custody of the High Court. The High Court failed to discharge the duty of preserving its control. The request by the High Court to have the enquiry through the Director of Vigilance was an act of self abnegation. The contention of the State that the High Court wanted the Government to be satisfied makes matters worse. The Governor will act on the recommendation of the High Court. This is the broad basis of Article 235. The High Court should have conducted the enquiry preferably through District Judges. The members of the subordinate judiciary look up to the High Court not only for discipline but also for dignity. The High Court acted in total disregard of Article 235 by asking the Government to enquire through the Director of Vigilance."

In view of the above categoric and emphatic

declaration of law, there can be little doubt that the conduct of a judicial officer can be only internally examined by senior judicial officer and Judges of the High Court themselves, and not by any outside agency.

Coming to the second question we are not inclined to accept the stand of the respondent-officers as a proposition of law, that the complainant cannot challenge the findings of the Enquiry Officer. If the complainant were denied the right, it would mean that he/she has no remedy against the report. Law cannot be interpreted in a manner so as to render a person remedyless. If no other remedy is available, he can certainly file writ petition and seek judicial review. But at the same time, we have no doubt in our mind that the scope of such a judicial review would be no different from the judicial review of finding of guilt in disciplinary proceeding. The scope of judicial review of administrative decisions is well settled by catena of decisions. We may notice some of them.

In Chief Constable of the North Wales Police V. Evans, (1982) 3 ALL ER 141 HL, Lord Hailsham

observed as under :-

> “The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatments, reaches, on a matter which it is authorized or enjoined by law to decide for itself, a conclusion which is correct in the eyes of the court.”

In State of Andhra Pradesh V. Sree Rama Rao, AIR 1963 SC 1723, the Supreme Court stated the law in these words ::

> “(7) The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant; it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. . . . . it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice of in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on

similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

Approving the above statement of law, a Constitution Bench of the Supreme Court in State of Madras V. G. Sundaram, AIR 1965 SC 1103, observed as under :-

"(7) It is well settled now that a High Court in the exercise of its jurisdiction under Art.226 of the Constitution, cannot sit in appeal over the findings of fact recorded by a competent Tribunal in a properly conducted departmental enquiry except when it be shown that the impugned findings were not supported by any evidence.
. . . . "

Reference may also be made to some other decisions and the relevant observations may be quoted as under :

"Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court, exercising its jurisdiction under Article 226, to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly

held, the question of adequacy or reliability of the evidence cannot be canvassed before the High Court."(Union of India V. Sardar Bahadur, (1972)4 SCC 618).

. . . .

"27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. It is an appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority."(Union of India V. Parma Nanda, (1989) 2 SCC 177).

. . . .

"13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary enquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal.

18. A review of the above legal position would establish that *the disciplinary authority, and on appeal, the appellate authority, being fact-finding authorities, have exclusive power to consider the evidence with a view to*

maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review; annot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."(B.C. Chaturvedi V. Union of India,(1995)6 SCC 749).

. . . . . .

"It has been authoritatively settled by a string of authorities of this Court that the *Administrative Tribunal cannot sit as a court of appeal over a decision based on the findings of the enquiring authority in disciplinary proceedings*. Where there is some relevant material which the disciplinary authority has accepted and which material *reasonably supports the conclusion* reached by the *disciplinary authority*, it is not the function of the Administrative Tribunal to review the same and reach the different finding than that of the disciplinary authority. The Administrative Tribunal, in this case, has found no fault with the proceedings held by the enquiring authority. It has quashed the dismissal order by reappreciating the evidence and reaching the finding different than that of the enquiring authority."(Govt.of T.N. V. A Rajapandian, (1995)1 SCC 216)

The legal position emerging from the above authorities may be summed up as follows. Judicial review is not an appeal from a decision but a review of the manner in which the decision was arrived at. In other words, judicial review can be made of the manner in which decision was taken and not the correctness of the decision itself. Where decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice giving the individual the opportunity to defend himself and to meet the case against him, the Court cannot substitute its own judgment for that of the administrative authority on a matter which falls squarely within the sphere of jurisdiction of that authority. While making judicial review of an administrative decision, the Court cannot re-appraise the materials on record or go into adequacy or otherwise of the same. Where there are some materials available with the authority it is not open to the High Court to review the materials or give its own finding on the basis of those materials.

The grievance of the petitioner arising from

the challenge to the findings in the preliminary enquiry report and the question of grant of relief including issuance of directions for regular departmental enquiry against respondent-officers has to be considered in the light of the legal position stated above. From the report of preliminary enquiry it appears that statements of as many as 27 witnesses were recorded which included the petitioner and her witnesses. The Enquiry Officer also took on record a large number of documents, Exhibits PE-1 to PE-41. Records of the office viz. log book of the car, report of the then District Judge, attendance register of the complainant etc. were called and taken on record. The Enquiry Officer went into the allegations individually against the officers and on the basis of the statements of witnesses and the documents on record, came to the conclusion that no “prima facie material” was available to warrant departmental action against Shri Uma Shanker Vyas after lapse of 10 years especially after the written apology by him for a dispute that had arisen between them which had been settled amicably by the officers posted at Ajmer at the relevant time. The Enquiry Officer found the

action of Shri Magha Ram Choudhary and Shri K.C. Singhal as “constituting gross misconduct and acting in a manner unbecoming of a judicial officer”. As regards Shri Narendra Kumar Purohit, Shri Rakesh Kumar Mathur and Shri Vinay Kumar Goswami, the Enquiry Officer found that the complainant had tried to implicate them but utterly failed as nothing had come out against the officers. No wonder, as suggested on behalf of the officers, they were named in the complaint as all three of them happened to be posted in the Registry at Jaipur at the relevant time, and coming as it did only two days after the Full Court Resolution of 24.5.2001, the complainant probably suspected that they had played some role. The Resolution was by the Full Court and any suspicion on the part of the petitioner apparently was too far-fetched and without any foundation. The fact that the complaint related to incidents of 1994 and made after several years cannot be ignored. Notwithstanding the delay in making complaint, the allegations having been found prima facie true against Shri Magha Ram Choudhary and Shri K.C. Singhal, decision was taken to initiate departmental enquiry against them. In absence

of specific materials, there was no basis to treat the respondents-officers on the same footing.

It is plain that while making judicial review this Court cannot re-appraise the materials, arrive at its own conclusion substituting them for the conclusion arrived at by the Enquiry Officer and approved by the Chief Justice, and issue direction for departmental enquiry or fresh enquiry against them. If a delinquent can not challenge the correctness of adverse findings which may have led to even his dismissal from service, it is difficult to appreciate as to how the complainant can be allowed to challenge the finding of the Enquiry Officer exonerating the accused officer.

In the facts and circumstances it can not be said that the enquiry was superficial or perfunctory. It is not the case of the petitioner that she was denied opportunity to participate in the enquiry. In fact, as seen above, she examined witnesses, besides herself, and produced documents which were taken into consideration. Had this been a case of total denial of

opportunity to the petitioner to substantiate her case, the position might have been different. Opportunity of hearing having been allowed and the enquiry held in accordance with the settled practice and procedure of this Court, in the absence of any procedural error it is not possible to direct a departmental enquiry against the concerned officers. Relief no.2 which is the main relief sought by the petitioner and essence of her case thus cannot be granted.

Apropos relief no.1, that is, quashing of the order of the Enquiry Judge by which the application for amendment of the charge was rejected, we find substance in the stand of the respondents that no such application having been filed by the petitioner for amendment of charge, she cannot make any grievance of the order on merit. It may not be out of place to mention that while rejecting the application for amendment of charge, the Enquiry Judge noticed that the allegations related to the period 10.6.1992 to 25.5.1993 and there was no justification to amend the charge so as to cover the subsequent

period.

Relief no.3 concerns the State Government. In course of hearing our attention was drawn to rule 25 AA inserted in the Rajasthan Civil Services (Conduct) Rules, 1971 vide No.F.9(2)(59) Karmik/Ka-3/97-1 dated 14.6.2000 in the light of the decision in Vishakha case as under :-

25AA. Prohibition of sexual harassment of working women –

(1) No Government servant shall indulge in any act of sexual harassment of any woman at her work place.

(2) Every Government servant who is incharge of a work place if brought to his congnigence shall take appropriate steps to prevent sexual harassment to any woman at such work place."

Explanation – For purpose of this rule, "Sexual harassment" includes such unwelcome sexually determined behaviour, whether directly or otherwise as –

(a) Physical contact and advances;
(b) demand or request for sexual favours;
(c) Sexually coloured remarks;
(d) showing any pornography; or
(e) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

So far the High Court is concerned, as seen

above, a Complaints Committee comprising of Hon'ble Smt. Justice Gyan Sudha Misra and Hon'ble Shri Justice Ashok Parihar has been constituted to examine the complaints of sexual harassment by the employees of the High Court. Similar Complaints Committees have been constituted in different districts/judgeships – on the direction of the High Court.

Before closing the discussion, we may briefly deal with the submission of Ms. Indira Jaisingh that after the petitioner made complaint in 1992 as many as ten charge-sheets were issued against her. The High Court has enclosed statement giving particulars of the complaints and the action taken thereon against the petitioner. It appears that in all 21 complaints were received between 1993 and 19.7.2004 out of which nine were 'filed' and in one of them she was exonerated. In one complaint advisory remark was issued against which appeal was pending at the relevant time. Some complaints have been shown to be pending which include five departmental enquiries – three under rule 16 (for major penalties) and two under rule 17 (for minor penalties), as mentioned above. The charge-sheets in

these enquiries were issued respectively on 22.9.2000, 20.1.2001, 6.6.2001, 28.7.2001 and 21.12.2001. Thus two enquiries were initiated prior to the date of the complaint of the petitioner on 22.9.2000 and 20.1.2001. Be that as it may, it cannot be said that the petitioner was slapped with departmental enquiries only because she dared to make complaint against the concerned officers – as suggested on behalf of the petitioner.

In the above premises, we conclude that no case has been made out for interference by this Court. The writ petition is accordingly dismissed alongwith miscellaneous applications, if any.

[AJAY RASTOGI], J. **[S.N. JHA], CJ.**

Skant/-